

## SUMMARY REPORT OF INVESTIGATION

## I. EXECUTIVE SUMMARY

Date of Incident:	January 18, 2018
Time of Incident:	7:02 pm
Location of Incident:	503 S. Plymouth Court, Chicago, IL 60605
Date of COPA Notification:	January 24, 2018
Time of COPA Notification:	5:39 pm

The [REDACTED] District Tactical Team completed three controlled buys from Mr. [REDACTED] [REDACTED]. During two controlled buys, [REDACTED] was seen with a firearm on his lap. Additionally, [REDACTED] has a criminal history of firearms violations. A tactical plan was created to apprehend [REDACTED]. During his apprehension, Captain [REDACTED]<sup>1</sup> deployed a patrol carbine rifle to assist in controlling [REDACTED] until additional units arrived. Once [REDACTED] was placed into custody he was transported to and processed at [REDACTED] District Lockup.

In his statement to COPA, [REDACTED] alleged Capt. [REDACTED] pointed a rifle at him for no reason and that Officer [REDACTED] and/or [REDACTED] failed to properly inventory his earrings. COPA determined that the allegation against Capt. [REDACTED] was **exonerated**, the allegation against Officer [REDACTED] is **unfounded**; and the allegation against Officer [REDACTED] is **not sustained**.

## II. INVOLVED PARTIES

Involved Captain #1:	Captain [REDACTED] Star # [REDACTED] Employee ID # [REDACTED] Date of Appointment: [REDACTED] 1996, Unit: [REDACTED] Date of Birth: [REDACTED] 1970, Male, White
Involved Officer #1:	Officer [REDACTED] Star # [REDACTED] Employee ID # [REDACTED] Date of Appointment: [REDACTED] 2015, Unit: [REDACTED] Date of Birth: [REDACTED] 1985, Male, White
Involved Officer #2:	Officer [REDACTED] Star # [REDACTED] Employee ID # [REDACTED] Date of Appointment: [REDACTED] 1995, Unit: [REDACTED] Date of Birth: [REDACTED] 1964, Male, Black.
Involved Individual #1:	[REDACTED] Date of Birth: [REDACTED] 1975, Male, / Black.

<sup>1</sup> Captain [REDACTED] obtained his rank on February 1, 2018 and will be referred to by his current rank.

### III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Captain [REDACTED] [REDACTED]	1. On January 18, 2018, at approximately 7:02 pm, in the vicinity of 503 S. Plymouth Court, pointed a rifle at [REDACTED] without justification, in violation of Rule 38.	Exonerated
Officer [REDACTED]	1. On January 18, 2018, at approximately 7:30 pm, in the vicinity of 1718 S. State Street, failed to properly inventory [REDACTED] earring, in violation of Rule 40.	Unfounded
Officer [REDACTED]	1. On January 18, 2018, at approximately 7:30 pm, in the vicinity of 1718 S. State Street, failed to properly inventory [REDACTED] earring, in violation of Rule 40.	Not Sustained

### IV. APPLICABLE RULES AND LAWS

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#### Rules

1. Rule 38: Prohibits unlawful or unnecessary use or display of a weapon.
2. Rule 40: Prohibits failure to inventory and process recovered property in conformance with Department orders.

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#### Special Orders

1. S07-01-01: Inventorying Arrestees' Personal Property – effective December 1, 2017.
2. S07-01-03: Inventorying Jewelry – effective May 1, 2014.

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#### Uniform Orders

1. U04-02-05: Police Carbine Operator Program – effective February 2, 2015.<sup>2</sup>

### V. INVESTIGATION<sup>3</sup>

#### a. Interviews

In a statement to COPA<sup>4</sup> on February 6, 2018, Mr. [REDACTED] stated while stopped at a red-light, Capt. [REDACTED] approached his vehicle and pointed a rifle at his face while ordering him to not move. [REDACTED] remained in his seat until a male officer unbuckled his seat belt. [REDACTED] was

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<sup>2</sup> Att. 48.

<sup>3</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>4</sup> Att. 6.

then ordered to exit the vehicle and he complied. [REDACTED] was handcuffed, searched, and transported to [REDACTED] District Lockup.

Upon arrival at Lockup, [REDACTED] learned he was being arrested for possession of a controlled substance. [REDACTED] explained that he was instructed to remove his excess clothing and jewelry. [REDACTED] added that the jewelry and wallet were left in his clothing and only his clothing was inventoried. Once [REDACTED] was released he was unable to locate a diamond earring. [REDACTED] was clear he was at the Wing Stop located between, State St. and Wabash Ave., obtaining \$50.00 from a friend just before he was stopped by Capt. [REDACTED]

In a **statement to COPA**<sup>5</sup> on October 2, 2018, **Accused Captain** [REDACTED] stated that while assigned as the Tactical Lieutenant of the [REDACTED] District, he was briefed on a narcotics investigation of [REDACTED] Capt. [REDACTED] explained that he was informed of [REDACTED] prior narcotic sales and he assisted in developing a plan to apprehend [REDACTED] During the preparation for [REDACTED] apprehension, a criminal history check was completed which revealed [REDACTED] history of firearms possession. Additionally, Capt. [REDACTED] learned that during two prior controlled buys, [REDACTED] was in possession of a firearm which he placed on his lap. Based on this information it was determined that patrol carbine rifles would be appropriate to assist in [REDACTED] apprehension.<sup>6</sup>

Once in the field, Capt. [REDACTED] was in the area where [REDACTED] was participating in a controlled buy, when he heard a broadcast of a successful controlled buy and a description of [REDACTED] vehicle. Capt. [REDACTED] observed [REDACTED] vehicle pass his location and began to follow him when [REDACTED] stopped at a red-light. Because [REDACTED] was stopped, Capt. [REDACTED] elected to complete a felony traffic stop. Capt. [REDACTED] exited his vehicle, armed himself with the rifle, approached [REDACTED] vehicle, pointed the rifle at [REDACTED] ordered him to show his hands, and waited approximately 10 – 15 seconds for backup to arrive. As Capt. [REDACTED] approached [REDACTED] vehicle, he observed an unexpected second occupant in the vehicle [REDACTED] Capt. [REDACTED] was clear that the rifle never entered the passenger compartment of the vehicle. Capt. [REDACTED] explained that once [REDACTED] and the passenger were secured, he lowered his rifle so it was no longer pointed at anyone.

In a **statement to COPA**<sup>7</sup> on July 19, 2018, **Accused Officer** [REDACTED] stated he responded to assist in transporting [REDACTED] Upon arrival, he observed [REDACTED] in handcuffs. Officer [REDACTED] transported [REDACTED] to the [REDACTED] District Lockup.

Upon arrival at Lockup, Officer [REDACTED] assisted in preparing [REDACTED] for processing. Officer [REDACTED] recalled having [REDACTED] remove his shoes, and additional pants. Officer [REDACTED] recalled escorting [REDACTED] to the bathroom and then transferring custody to a Tactical Officer ([REDACTED] that was present in the Lockup. Officer [REDACTED] was clear that he did not inventory any of [REDACTED] property.

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<sup>5</sup> Att. 35.

<sup>6</sup> Capt. [REDACTED] was trained on the carbine rifle on April 9, 2011, and qualified on the weapon on September 19, 2017. Atts. 51 & 52.

<sup>7</sup> Att. 29.

In a statement to COPA<sup>8</sup> on October 2, 2018, Accused Officer [REDACTED] stated he was the Tactical Officer that assumed custody of [REDACTED] in Lockup from Officer [REDACTED]. Officer [REDACTED] informed [REDACTED] that he was being arrested for his narcotics activity and inventoried [REDACTED] personal property. Officer [REDACTED] explained that he inventoried and searched the items listed on Inventory Sheets 14085494<sup>9</sup> and 14085453.<sup>10</sup> Officer [REDACTED] was clear that had [REDACTED] been in possession of jewelry, it would have been inventoried as prisoner property. Officer [REDACTED] explained that he did not witness [REDACTED] in possession of jewelry.

During his statement, Officer [REDACTED] recounted Department policy for processing and documenting prisoner jewelry. Additionally, Officer [REDACTED] explained that since jewelry is shiny it is readily visible and easy to identify.

#### b. Digital Evidence

**Body Worn Camera**<sup>11</sup> (BWC) footage details a felony traffic stop on [REDACTED] vehicle. Additionally, the footage shows Capt. [REDACTED] pointing a rifle at [REDACTED] while [REDACTED] is seated in the driver's seat and being ordered out of the vehicle. As soon as [REDACTED] exits he is handcuffed, and Capt. [REDACTED] lowers the rifle and walks away from the vehicle.<sup>12</sup>

Additional, BWC footage details a portion of [REDACTED] being processed in [REDACTED] District Lockup. During the depicted portion of his processing, [REDACTED] was not instructed to remove any earring nor did any officer comment on the presence of an earring. However, a bag of cannabis was recovered from [REDACTED] socks.<sup>13</sup>

Further, BWC footage captured radio transmissions (apparently from a surveillance officer) describing that the “target” (confirmed to be [REDACTED] in the same BWC) was in a Dodge Caravan, license plate [REDACTED] and then confirming that a successful drug sale occurred between the CI and [REDACTED]. The transmission then broadcast the path of the Caravan and confirmed that the correct vehicle was stopped by an officer. Sgt. [REDACTED] was subsequently heard both asking another officer if a firearm had been recovered from the vehicle and also stating his expectation that a firearm was supposed to be in the vehicle.<sup>14</sup>

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<sup>8</sup> Att. 40.

<sup>9</sup> Pgs. 11 and 12 of Att. 22.

<sup>10</sup> Pgs. 13 and 14 of Att. 22.

<sup>11</sup> Att. 24.

<sup>12</sup> Relevant portions from 00:58 to 01:27 of file [REDACTED] 2018-01-18\_1903; 00:31 to 01:13 of file [REDACTED] 2018-01-18\_1903; 00:55 to 01:24 of file [REDACTED] 2018-01-18\_1903; 00:35 to 01:22 of file [REDACTED] 2018-01-18\_1903; 00:00 to 00:18 of file [REDACTED] 2018-01-18\_1903 of Att. 24.

<sup>13</sup> Relevant file [REDACTED] 2018-01-018\_1915 of Att. 24.

<sup>14</sup> Relevant portions from 08:55 to 10:24, 13:42, and 19:20 of [REDACTED] 2018-01-18\_1852; 08:51 to 10:17 of [REDACTED] 2018-01-18\_1852 of Att. 24.

### **c. Documentary Evidence<sup>15</sup>**

**Original Case Incident Reports**<sup>17</sup> and **Supplementary Reports**<sup>18</sup> detail that on January 12, 2018, the CI purchased crack cocaine from [REDACTED] for \$60.00 using pre-recorded Department funds.<sup>19</sup> Additionally, on January 14, 2018, the CI purchased crack cocaine from [REDACTED] who was in his vehicle bearing Illinois License Plate [REDACTED] for \$60.00 using pre-recorded Department funds.<sup>20</sup> Finally, on January 18, 2018, the CI purchased crack cocaine from [REDACTED] for \$60.00 using pre-recorded Department funds.<sup>21</sup> Once the transaction was completed, the CI positively identified [REDACTED] as the person who sold narcotics to him on the three above mentioned dates, and [REDACTED] was stopped. When [REDACTED] was searched, \$60.00 in pre-recorded funds that were used in the January 18th transaction and \$20.00 in pre-recorded funds that were used in the January 14th transaction were recovered from his person.

**Inventory Sheets**<sup>23</sup> detail the recovery of the crack cocaine after the CI completed each controlled buy.<sup>24</sup> Additionally, the sheets detail [REDACTED] personal property and \$360.00 inventoried during his arrest on January 18, 2018.<sup>25</sup> Finally, the sheets list Officer [REDACTED] as the inventorying officer.

## VI.     **LEGAL STANDARD**

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;

<sup>15</sup> An Investigatory Stop Report was completed for [REDACTED] Att. 25.

16 Att. 10.

<sup>17</sup> Atts. 11, 14, and 16.

<sup>18</sup> Atts. 12, 13, 15, and 17.

19 Att. 16.

Att. 10.

Att. 14.

Att. 11.

Att. 49

Att. 22.

25 Pgs. 3

Figs. 3, 4 and 11 to 14 of Alt. 2

2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

## VII. ANALYSIS

COPA recommends a finding of **Exonerated** for the allegation that Capt. [REDACTED] pointed a rifle at [REDACTED] without justification. U04-02-05 governs when a Department Member can use a carbine rifle. Specifically, section II(B) permits a Department Member to "arm themselves with a carbine [rifle] when ... the [member] reasonably believes that he ... is confronting ... a threat that may require the use of deadly force ... and the carbine [rifle] is the appropriate firearm for the situation." Additionally, the note to section II(B) states "[t]he nature of the assignment or situation can be enough to warrant the [member]'s action."

Here, [REDACTED] was suspected of selling narcotics on numerous occasions and was engaged in a narcotics sale immediately prior to his contact with CPD. [REDACTED] himself corroborated that he was at the location of the most recent narcotics sale to receive money owed to him, immediately prior to the traffic stop and his subsequent arrest. Additionally, Capt. [REDACTED] explained that he was aware of [REDACTED] history of being in possession of firearms while selling narcotics, which is corroborated by Sgt. [REDACTED] who is captured on BWC inquiring about the presence of a firearm in [REDACTED] vehicle after the traffic stop and mentioning that a firearm was expected to be located inside. Further, Capt. [REDACTED] explained that when [REDACTED] travel was impeded by the red-light he made a tactical decision to detain [REDACTED] at the location until additional officers could arrive and secure [REDACTED]. Finally, Capt. [REDACTED] and the BWC footage were clear that as soon as [REDACTED] was handcuffed the rifle was lowered. Based on this information, COPA determined by clear and convincing evidence that the decision to deploy the rifle was reasonable and in conformance with Department Policy.

COPA recommends a finding of **Unfounded** for the allegations that Officer [REDACTED] failed to properly inventory [REDACTED] earring. Here, Officers [REDACTED] and [REDACTED] were clear that Officer [REDACTED] did not inventory any of [REDACTED] personal property nor was he responsible for inventorying any of [REDACTED] personal property, to include his jewelry. Additionally, Inventory Sheets clearly show that Officer [REDACTED] inventoried [REDACTED] personal property. Therefore, COPA determined that by clear and convincing evidence that Officer [REDACTED] was not responsible for inventorying [REDACTED] personal property and could not have engaged in the alleged conduct.

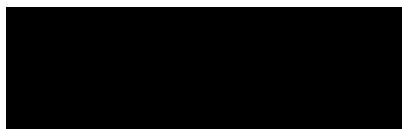
COPA recommends a finding of **Not Sustained** for the allegation that Officer [REDACTED] failed to properly inventory [REDACTED] earring. Here, COPA was unable to locate any evidence, other than [REDACTED] statement, that supports the allegation. Additionally, COPA was unable to locate any evidence, other than Officer [REDACTED] statement, that refutes the allegation. Therefore, COPA is unable to determine if the alleged conduct occurred.

### VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding / Recommendation
Captain [REDACTED] [REDACTED]	1. On January 18, 2018, at approximately 7:02 pm, in the vicinity of 503 S. Plymouth Court, pointed a rifle at [REDACTED] without justification, in violation of Rule 38.	Exonerated
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Officer [REDACTED]	1. On January 18, 2018, at approximately 7:30 pm, in the vicinity of 1718 S. State Street, failed to properly inventory [REDACTED] earring, in violation of Rule 40.	Not Sustained

Approved:



March 21, 2019

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Andrea Kersten

*Deputy Chief Administrator – Chief Investigator*

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Date

**Appendix A**

Assigned Investigative Staff

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<b>Squad#:</b>	
<b>Investigator:</b>	
<b>Supervising Investigator:</b>	
<b>Deputy Chief Administrator:</b>	Andrea Kersten